# IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH AT BILASPUR

Writ Petition No. 1498 /2003

PETITIONER : Managing Director,
Bhilai Steel Plant,
Ispat Bhavan, Bhilai
District, Durg (C.G.)

Versus

RESPONDENTS :

1. General Secretary,
Hindustan Steel Employees
Union, Bhilai, District Durg
(C.G.)

2. Member Judge,
Industrial Court,
Bench at Raipur (C.G.)

P. B. No. 13851/03
Presented by Shri Gautam
dated 02.05.03

**WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF AN APPROPRIATE WRIT, ORDER OR DIRECTION ETC.**

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR
(Division Bench)

CORAM : Hon'ble Shri A.K. Patnaik, CJ
& Hon'ble Shri Satish K. Agnihotri, J.

WRIT PETITION NO.1498 OF 2003

ORDER FOR CONSIDERATION

Sd/-
Satish K. Agnihotri
Judge

HON'BLE SHRI A.K. PATNAIK, CJ.

Sd/-

CHIEF JUSTICE
28 /09/2005

POST IT FOR 29th /09/2005.

Sd/-
Satish K. Agnihotri
Judge

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**HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR**
**(Division Bench)**

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**CORAM : Hon'ble Shri A.K. Patnaik, CJ**
**& Hon'ble Shri Satish K. Agnihotri, J.**

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**WRIT PETITION NO.1498 OF 2003**

Managing Director, Bhilai Steel Plant

Versus

General Secretary, Hindustan Steel Employees Union and another

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Present: Mr. P. Diwaker, Sr. Advocate with Mr. Kunal Das, learned counsel for the petitioner.

Mr. Alok Sharma, learned counsel for respondent No.1.

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**ORDER**
**(Passed on 29th of September, 2005)**

The following Order of the Court was passed by **Satish K. Agnihotri, J: -**

The present petition filed under Article 226/227 of the Constitution of India impugns the award dated 06.02.2003 (Annexure P-12) passed by the Industrial Court, Bench at Raipur (C.G.) in reference No.6/MPIR Act/1/2001. The State of Chhattisgarh in exercise of the powers under Section 51 of the Chhattisgarh Industrial Relations Act, 1960 referred the following disputes to the Industrial Court for adjudication:-

a. Whether, there is any justification for granting similar service benefits to the employees employed in 25 statutory canteens as are admissible to regular employees of the Bhilai Steel Plant and if yes, then what should be scheme and in this regard, what directions should be issued to the employer?

b. Whether, 17 non-statutory canteens in the Bhilai Steel Plant should be treated as statutory canteens and the employees employed therein, should be given salary and other service

benefits at par with employees of Bhilai Steel Plant, if yes, what relief should be provided to the employees and in this regard, what directions should be issued to the employer?

(2) The relevant facts in brief are that the petitioner is the Managing Director of Bhilai Steel Plant, a unit of Steel Authority of India Limited (SAIL) and a Government company registered under the provisions of Companies Act, 1956. The petitioner - plant is situated at Bhilai in the State of Chhattisgarh. The Steel Authority of India Limited has various steel plants at Durgapur in West Bengal, Salem in Tamilnadu and Rourkela in the State of Orissa. There are 50 departments (hereinafter referred to as "factories") in Bhilai Steel Plant at Bhilai, District Durg registered as Factories, under the provisions of Factories Act, 1948. In some of the factories more than 250 workers are employed and in some of the factories less than 250 workers are employed. In all, there are more than 42 canteens situated in different sections and outside the works area of the Steel Plant to cater to the need of the employees working in the Bhilai Steel Plant. All the canteens are run by the Cooperative Societies. The canteen facility is provided to each factory as required under Section 46 of the Factories Act, 1948. The factories which employed more than 250 workers are categorized as "statutory canteens", which are 25 in numbers and other factories employed less than 250 workers are categorized as "non-statutory canteens", which are 17 in numbers. According to the petitioner, all the canteens either statutory or non-statutory are controlled and managed by the cooperative societies registered under the provisions of the Chhattisgarh Cooperative Societies Act, 1960.

(3) All the employees of the canteen through Hindustan Steel Employees Union in the representative capacity along with 43 individuals filed a writ petition under Article 226/227 of the Constitution of India being M.P. No.2041 of 1992 before the High Court of Madhya Pradesh at Jabalpur, praying for a declaration / direction that the canteen workers employed by the petitioner through cooperative societies be treated as regular employees of the Bhilai Steel Plant, with effect from the date when they entered into service and further for grant of same pay and benefits at par with the regular employees of the Bhilai Steel Plant. Learned Single Judge of the High Court of Madhya Pradesh at Jabalpur after hearing counsel for the parties, observed as under:-

> "It is also not in dispute that BSP has provided plots, buildings, furniture, electricity, water, fuel to the canteens and also gives subsidies for purchase of foodgrains, cooking oil etc. and annual grants for purchase of utensils and crockery. It is also not disputed that 90% of the expenditure on wages is provided by BSP and the employees' contribution towards GPF and part of bonus is also paid by BSP. All this is done to comply with the requirements and the obligations of BSP as the occupier u/s 46 of the Act and the Rules 77 to 82 and also as a part of labour welfare activity to ensure proper standard and quality of food supply in the canteens (para 3 of the return). It is also not in dispute that the workers working in the statutory or non-statutory canteens do the same type of work under the control and supervision of managing committees."

Learned Single Judge of High Court of Madhya Pradesh at Jabalpur further held as follows:-

> "In the present case on the facts which are not disputed which are referred to in paras 2 & 3 above, it cannot be contended that the canteen workers of the statutory canteens and also of non-statutory canteens would

have no status of the workers of the BSP. Therefore, they are entitled to the benefits which are available to the workmen of the BSP. Besides the fact that workers like the petitioners in other plants of the respondent No.1 like Durgapur and Salem the canteen workers who are working either in statutory or non-statutory canteens are getting the benefits which are being given to the other workers of those plants.

Now the question arises whether in this petition, the point regarding benefits and service conditions which is applicable to the workmen of the BSP can be granted or not. In the light of the decision of the Supreme Court in Parimal Chandra Raha's case (supra) as 'the canteen workers have been declared to have the status of workers of BSP, a writ of mandamus is issued to the respondents No.1 and 2 to treat the canteen workers as the workers of BSP and to pay them the minimum pay scale and wages according to revised structure of wages according to Chapter III of the Memorandum of Agreement of the National Joint Committee for the Steel Industry. As regards other service conditions and benefits the BSP shall determine the same by prescribing the appropriate service conditions or for the same an industrial dispute be raised which shall be adjudicated in accordance with law by the appropriate forum.'"

(4) The matter was taken to the Division Bench in letters patent appeal i.e. L.P.A. No.208 of 1995 by the Steel Authority of India Limited and the Managing Director, Bhilai Steel Plant (present petitioner). The learned Division Bench of High Court of Madhya Pradesh at Jabalpur after hearing both the parties came to the following conclusions:-

"From the above decisions, it is clear that where the provisions of the Factories Act, it is the statutory obligation on the employer to provide and maintain canteen for the use of his employees, the canteen becomes the part of the establishment and therefore, the workers employed in the

canteen are the employees of the management. The workers employed in the canteens run by the appellant Factory for which the factories are under a legal obligation are, thus, the employees of the management and not of the co-operative societies which are managing the canteens in these factories. As observed earlier, providing for fixation of price, under Rule 80 of the M.P. Rules for food and other items served in these canteens, does not create transfer of the obligation to a co-operative society but only permits management by such society and allows profit up to 5% on its working capital employed in the running of the canteens subject to the fulfillment of the conditions enumerated in Clause (a) to (d) of Rule 80. Rule 77 of the M.P. Rules also clearly attaches the obligation on the occupier and does not make it transferable in any case. In these circumstances, the order passed by the learned Single Judge to the effect that the workers of the statutory canteens have the status of the workers of the BSP and are entitled to the benefits which are available to the workmen of the BSP, does not call for any interference.

This leaves us with the case of workers in non-statutory canteens. It is clear that the canteen would become a part of the establishment even when there is no statutory obligation but the obligation is otherwise on the employer to provide the canteen. The obligation to provide a canteen has to be distinguished from the obligation to provide facilities to run canteen as held in the case of Parimal Chandra Raha (supra). Where the obligation is implicitly accepted by the employer or cast upon him either by an agreement or by an award, it may be inferred from the circumstances and provision of the canteen may be held to have become a part of the service conditions of the employees. Whether the provision for canteen service has become a part of the service condition or not, is a question of fact to be determined on the facts and circumstances of each case."

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The learned Division Bench allowed the letters patent appeal in part quashing the finding of the learned Single Judge to the effect that the employees in non-statutory canteens are the employees of Bhilai Steel Plant. However, it was held that such employees are free to prove their case in an appropriate forum. The direction with regard to the employees working in statutory canteens given by the learned Single Judge was maintained.

**(5)** The Steel Authority of India Limited and the Bhilai Steel Plant filed a Special Leave Petition (Civil) No.10687 of 1996 in the Supreme Court of India, which was dismissed on 08.05.1996. Special Leave Petition (Civil) No.21220 of 1996 filed by the workmen through I. Ramanayya was dismissed on 07.07.1997 and the review petition was also dismissed thereafter on 05.09.97. Special Leave Petition (Civil) No.12423 of 1996 filed by the President of the Co-operative Societies was also dismissed on 10.07.1996. Accordingly, Hindustan Steel Employees Union filed an application in Form 'J' and 'L' against the management of the petitioner before the Assistant Labour Commissioner, Durg. The petitioner raised preliminary objections to the effect that the cooperative societies which run canteens be noticed before deciding the proceedings as they were the parties before the High Court. The conciliation failed and the State of Chhattisgarh by order dated 05.10.2001 (Annexure P-7) made a reference of the following two disputes to the Industrial Court for adjudication:-

a. Whether, there is any justification for granting similar service benefits to the employees employed in 25 statutory canteens as are admissible to regular employees of the Bhilai Steel Plant and if yes, then what should be scheme and in this regard, what directions should be issued to the employer?

b. Whether, 17 non-statutory canteens in the Bhilai Steel Plan should be treated as statutory canteens and the employees employed therein, should be given salary and other service benefits at par with employees of Bhilai Steel Plant, if yes, what relief should be provided to the employees and in this regard, what directions should be issued to the employer?

**(6)** Mr. P. Diwaker, learned Sr. counsel assisted by Mr. Kunal Das, learned counsel for the petitioner submitted that the cooperative societies, which are running the canteens wherein the workmen in dispute are employed, are necessary parties. The canteen workers are the employees of the cooperative societies and the cooperative societies have disciplinary control over the canteen workers. The cooperative societies were also parties before the High Court of Madhya Pradesh at Jabalpur in the writ petition & in LPA and the cooperative societies have filed Special Leave Petition (Civil) before the Supreme Court being Special Leave Petition (Civil) No.12423 of 1996 which was dismissed on 10.07.1996, the award passed in the absence of the cooperative societies is bad and illegal and deserves to be quashed for non-joinder of necessary parties. Learned counsel for the petitioner further submitted that the petitioner had raised preliminary objections before the Assistant Labour Commissioner as well as before the Industrial Court to the effect that the dispute cannot be decided in the absence of the cooperative societies because the cooperative societies employed the canteen workers and the service conditions of the canteen workers are decided by an agreement between the workers union and the respective cooperative societies. The Industrial Court by not issuing the notices to the cooperative societies has erred in passing the award against the petitioner. Learned counsel further submitted that the petitioner is required to maintain canteen services

under Section 46 of the Factories Act, 1948 and as such the responsibility of the petitioner to provide benefits is only for the purpose of Factories Act, 1948. Learned counsel for the petitioner further contended that the workers of the various factories formed a cooperative society for running canteen in the factory. The facilities like land, building, water, power, furniture and other infrastructure facilities are provided to ensure that the canteen is maintained in accordance with the provisions of the Factories Act, 1948 and Madhya Pradesh Factories Rules, 1962. The petitioner has also ensured that the quality of the various eatables is good and the prices are maintained by providing subsidies to the canteens. Accordingly, the petitioner is liable to the extent as provided under the Factories Act, 1948 as well as the Madhya Pradesh Factories Rules, 1962. Learned counsel for the petitioner submitted that the canteen workers/employees cannot be treated at par with the employees of the petitioner-plant for the purpose of granting similar service benefits as admissible to the regular employees of the petitioner-plant. The canteen workers are employed by the management of the co-operative societies and the terms & conditions are determined in accordance with the agreement between the management of the cooperative societies and the union of the canteen workers and the canteen workers do not contribute directly to the production of the steel in the plant. The service conditions of the employees of the petitioner-plant are different than the service conditions of the canteen workers. Learned counsel for the petitioner hence submitted that the award be set aside as bad and illegal.

(7) Mr. Alok Sharma, learned counsel for respondent No.1, on the contrary, submitted that so far as the statutory canteens are concerned, the issue has been settled by the High Court of Madhya Pradesh in W.P. No. 2041 of 1992 that the employees of the statutory

canteens are entitled to all the benefits which are available to the workmen of the petitioner – plant and the Industrial Court by its award has rightly held that the workers / employees working in the statutory canteens are entitled to the same wages and other benefits which are given to the workers / employees engaged in the activity of the production of the steel. Learned counsel further submitted that the difference between the statutory and non-statutory canteens is on account of the number of workers employed in a particular factory and if the number of workers are more than 250, the canteens are treated as statutory canteens and if the workers are less than 250, the canteens are treated as non-statutory canteens. All the canteens whether statutory or non-statutory are run by the cooperative societies of the workers of the petitioner – plant under the bye-laws of the cooperative societies. The president of the society is to be nominated by the Managing Director. The facilities like land, building, water, power, furniture and other infrastructure facilities are provided by the petitioner – plant. Learned counsel for respondent No.1 further submitted that the workers of the canteens irrespective of the fact as to whether they are employed by the management of the petitioner - plant or through the medium of cooperative societies or otherwise participated in the activities of the production of the steel in the petitioner – plant and as such they should be given the same pay and benefits which are admissible to the other workers of the petitioner – plant. The employees of the canteens are liable to pay provident fund which is deposited in the provident fund trust of the petitioner – plant. Learned counsel for respondent No.1 further submitted that the present petition be dismissed on the ground of suppression of fact that the petitioner has not complied with the directions of the High Court of Madhya Pradesh to pay minimum pay scale.

(8) This petition is mainly filed under Article 227 of the Constitution of India whereby the High Courts have power of superintendence over all Courts and Tribunals. The scope of interference by the High Court in exercise of the powers of superintendence under Article 227 of the Constitution of India is very limited to the extent of examining the error apparent on the face of the record or not following the established rule of law and procedural aspects. On the first point raised by the petitioner that the Industrial Court had adjudicated the disputes referred without impleading the cooperative societies as parties, it appears that the said cooperative societies were parties before the Single Bench of the High Court of Madhya Pradesh and the Division Bench of the High Court of Madhya Pradesh. Before the Supreme Court, the cooperative societies had also filed the Special Leave Petition (Civil) against the order dated 15.04.96 passed by the Division Bench of the High Court of Madhya Pradesh at Jabalpur in Letters Patent Appeal. The Special Leave Petition (Civil) No.12423 of 96 filed by the President of the cooperative societies was dismissed on 10.07.96 by the Supreme Court. The Industrial Court in its award dismissed the objections of the petitioner on the ground that the said objections were not raised during the conciliation proceedings before the dispute was referred to the Industrial Court for adjudication. On perusal of the papers we find that the objection was raised by the employer- petitioner before the Assistant Labour Commissioner in the following terms:

> " All negotiations with regard to the service conditions of the canteen workers are being made between Cooperative Societies and Steel Workers Union.
>
> It is, therefore, prayed that in order to settle the claims of the canteen workers, notices may be sent to all presidents of the Cooperative Societies and Steel Workers Union. "

The petitioner had further raised this objection before the Industrial Court also in the following terms :

> "(b) That undisputedly the employees of various canteens are employed by different individual Co-operative Societies, which has been discussed appreciated and held by the Hon'ble High Court of Madhya Pradesh. The first party has not impleaded the respective Co-operative Society who are in fact their employers and as such the reference deserves to be rejected for non-joinder of necessary party.
>
> (c) Since the employees in different canteens are employed by different Co-operative Societies, their date of appointments, service conditions etc. will be different and as such it cannot be considered as a single course of action and as such the reference deserves to be rejected for misjoinder/non-joinder of cause of action. "

There is no dispute that the cooperative societies employed the canteen workers and their service conditions are governed by the agreement between the management of the cooperative societies and the representative union of the canteen workers. The dispute referred to before the Industrial Court was whether the employees of the statutory canteens are entitled to similar service benefits as are admissible to the regular employees of the Bhilai Steel Plant or not, in addition, in case of non-statutory canteens that whether non-statutory canteens should be treated as statutory canteens or not. The said reference cannot be decided in absence of management of the cooperative societies for the purpose of deciding as to what are the service benefits offered to the canteen workers as per their service agreement and whether wages paid by the management of the cooperative societies is reimbursed by the petitioner-plant or not.

(9) In the case of **Haldia Refinery Canteen Employees Union and others Vs, M/s. Indian Oil Corporation Ltd. and Others,** reported in **AIR 2005 SC 2412,** the Supreme Court after having considered the decisions in the cases of Indian Petrochemicals Corporation Ltd. Vs. Shramik Sena (AIR 1999 SC 2577), Reserve Bank of India Vs. Workmen (AIR 1996 SC 1241), Parimal Chandra Raha Vs. Life Insurance Corporation of India (AIR 1995 SC 1666) and M.M.R.Khan Vs. Union of India (AIR 1990 SC 937) summarized various factors in para 9 as under :

> "(a) The canteen has been there since the inception of the appellant's factory.
>
> (b) The workmen have been employed for long years and despite a change of contractors the workers have continued to be employed in the canteen.
>
> (c) The premises, furniture, fixture, fuel, electricity, utensils etc. have provided for by the appellant.
>
> (d) The wages of the canteen workers have to be reimbursed by the appellant.
>
> (e) The supervision and control on the canteen is exercised by the appellant through its authorized officer, as can be seen from the various clauses of the contract between the appellant and the contractor.
>
> (f) The contractor is nothing but an agent or a manager of the appellant, who works completely under the supervision, control and directions of the appellant.
>
> (g) The workmen have the protection of continuous employment in the establishment."

The Supreme Court after having considered the aforesaid decisions and the various factors as summarized in para 9, quoted above, came to the conclusion that the respondent/management can exercise effective control over the contractor on certain matters in regard to the running of the

canteens, but such control was to be exercised to ensure that the canteen could run in an efficient manner and to provide wholesome and healthy food to the workmen of the establishment. However, it was held that "this does not mean that the employees working in the canteen have become the employees of the management." The Supreme Court further held that the finding of the Division Bench of the High Court that appellants did not become the workers of the management for a purpose other than the Factories Act was just and proper. In view of the settled position of law, it is necessary that the management of the cooperative societies should be heard to decide as to what was the control of the petitioner-plant over the canteen workers and to what extent. The finding of the Industrial Court that the petitioner-plant had not raised this objection before the Government is wrong on its face as it is found in the reply before the Assistant labour Commissioner that the objection was raised and even the issues referred to the Industrial Court for adjudication could not have been decided without notice to the management of the cooperative societies.

**(10)** On the issue of grant of similar service benefits to the canteen workers as admissible to the regular employees of the petitioner-plant, the issue as to whether canteen workers of the statutory canteens are the employees of the petitioner-plant is finally settled by the Division Bench of the High Court of Madhya Pradesh in Letters Patent Appeal No. 208/95 filed by the Steel Authority of India Ltd. and the Managing Director, Bhilai Steel Plant, in the following terms :

> "From the above decisions, it is clear that where the provisions of the Factories Act, it is the statutory obligation on the employer to provide and maintain canteen for the use

of his employees, the canteen becomes the part of the establishment and therefore, the workers employed in the canteen are the employees of the management."

The Special Leave Petitions filed by all the parties i.e. Steel Authority of India Ltd and Bhilai Steel Plant, Workmen and the President of the Cooperative Societies have been dismissed by the Supreme Court. In regard to the non-statutory canteens, it is evident that the canteens are categorized as statutory canteens and non-statutory canteens on the basis of number of employees/workers employed in the particular factory. In case of statutory canteens, a factory should have at least 250 or more workers, however in non-statutory canteens the number of workers in the factory are less than 250. All other service conditions namely the workers are employed to provide wholesome and healthy food to the workmen of the establishment as required under Section 46 of the Factories Act, 1948 to contribute in the functioning and enhancement of the production of steel in the petitioner- plant is the same for the statutory as well as non-statutory canteens. The service conditions are also governed by the same method i.e. by an agreement between the management of the cooperative societies and the union of the canteen workers. Thus, the canteen workers employed in non-statutory canteens are also the employees of the management.

**(11)** Whether the canteen workers are entitled to similar service benefits as are admissible to the regular employees of the Bhilai Steel Plant, it was submitted by Mr. P. Diwaker, learned Senior Counsel appearing for the petitioner that the facilities like land, building, water, power, furniture and other infrastructure facilities are provided to the canteens run by the cooperative societies of the employees of the petitioner-plant to ensure that the canteen is maintained in accordance with the provisions of the

Factories Act, 1948 and Madhya Pradesh Factories Rules, 1962. It was further submitted that the quality of various eatables available in the statutory and non-statutory canteens is good and the prices are maintained by providing subsidies to the canteens. However, it was submitted that the canteen workers do not contribute directly or incidentally to the production of steel in the plant and, therefore, the canteen workers are not entitled to similar benefits as are admissible to the regular employees of the petitioner-plant. On the contrary, supporting the award passed by the Industrial Court, Mr. Alok Sharma, learned counsel appearing for respondent No.1 submitted that the canteen workers of statutory and non-statutory canteens are under effective control and management of the petitioner-plant and the canteens are provided facilities like land, building, water, power, furniture and other infrastructure facilities, free of cost. The quality of food is also maintained as directed by the management of the petitioner-plant. The canteen workers are directly contributing to the production of steel in the petitioner-plant. The employees of the canteens are liable to pay provident fund which is deposited in the provident fund trust of the petitioner – plant. Therefore, the canteen workers are entitled to similar service benefits as are admissible to the employees of the management of the petitioner-plant.

(12) In the case of **Indian Petrochemicals Corporation Ltd. and another Vs. Sharmik Sena and others,** reported in **AIR 1999 SC 2577** cited by learned counsel for both the parties, the Supreme Court having considered the cases of *Employers in relation to the Management of Reserve Bank of India Vs. Workmen (Supra), Parimal Chandra Raha Vs. Life Insurance Corporation of India (Supra) and M.M.R. Khan Vs. Union of India,* held as under :

" The Factories Act does not govern the rights of employees with reference to recruitment, seniority, promotion retirement benefits etc. These are governed by other statutes, rules, contracts or policies. Therefore, the workmen's contention that employees of a statutory canteen ipso facto become the employees of the establishment for all purposes cannot be accepted. "

(13) In the case of **Hari Shankar Sharma and others Vs. M/s Artificial Limbs Manufacturing Corporation and others,** reported in **AIR 2002 SC 226,** the Supreme Court held as under :

" It is noteworthy that the respondent No.1 had no say as to who should be employed by the contractor nor the method of recruitment to be followed by the contractor. There was no obligation on the contractor to employ the persons who had served under earlier contractors. Even if the agreement had contained a condition that the contractor must retain the old employees, it would not necessarily mean that those employees were the employees of the establishment. "

(14) Learned counsel for respondent No.1 relied on the decision in the case of **Steel Authority of India Ltd. and Others Vs. National Union Waterfront Workers and others,** reported in **(2001) 7 S.C.C. 1**, (para 94) wherein the Supreme Court, having referred decision in the case of Gammon India Ltd. Vs. Union of India (1974) 1 SCC 596, upheld the constitutional validity of the Contract Labour (Regulation and Abolition) Act,1970. In the present case, the dispute involved is whether the canteen workers are entitled to the similar service benefits as admissible to the regular employees of the petitioner – plant. The facts of that case are not relevant for adjudication of the issue in the present case.

**(15)** Learned counsel for respondent No.1 further relied on the decision of the Supreme Court in the case of **Mishra Dhatu Nigam Ltd. etc. Vs. M. Venkataiah & others,** reported in **JT 2003 (7) SC-95,** to contend that where in discharge of a statutory obligation of maintaining a canteen in an establishment, the principal employer availed the services of a contractor and the contract labour would indeed be the employees of the principal employer. The position as to whether the canteen workers are the employees of the petitioner-plant or not is already settled by the Division Bench of the High Court of Madhya Pradesh in Letters Patent Appeal No. 208 of 1995 and further by our decision in the preceding paragraphs with regard to the non-statutory canteen workers.

**(16)** Upon considering the submissions of learned counsel for the parties and the facts of the present case, we are of the view that the Industrial Court has not considered the working conditions, service conditions, working hours and other incidental conditions of the canteen workers to avail the similar service benefits as admissible to the regular employees of the Bhilai Steel Plant. The Industrial Court ought to have issued the notice to the management of the cooperative societies and ought to have examined all the relevant facts before granting the same service benefits of the regular employees of the petitioner – plant to the workers of the canteens.

**(17)** Learned counsel for the petitioner lastly submitted that during the pendency of the present writ petition, the management of the Bhilai Steel Plant has executed an agreement with the Steel Workers Union (Representative Union) on 20.10.2004. The agreement (Annexure-R/5), from clause 4.6 to 4.16, deals with the canteen facilities including the

benefits agreed to be granted to the workers of the statutory and non-statutory canteens.

(18) Learned counsel for the respondent No.1 submitted that the said agreement dated 20.10.2004 is not executed between the management of the petitioner – plant and the representative union of the canteen workers. The signatures have been obtained under duress. Learned counsel further submitted the agreement is not registered. It is settled position of law that in normal course the agreement between the management and the employees is binding on both the parties. In the case of **Herbertsons Ltd. Vs. The Workmen of Herbertsons Ltd. and others,** reported in **AIR 1977 SC 322,** cited by learned counsel for respondent No.1, the Supreme Court held as under :

> "18. When a recognized union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognized union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other inducements. Nothing of that kind has been suggested against the President of the 3rd respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and, therefore, is entitled to due weight and considerations.
>
> 21. Besides, the settlement has to be considered in the light of the conditions that were in force at the time of the reference. It will not be correct to judge the settlement merely in the light of the award which was pending appeal before this Court. So far as the parties are concerned there will always be uncertainty with regard to the result of the litigation in a court proceeding. When, therefore,

> negotiations take place which have to be encouraged, particularly between labour and employer in the interest of general peace and well-being, there is always give and take. Having regard to the nature of the dispute, which was raised as back as 1968, the very fact of the existence of a litigation with regard to the same matter which was bound to take some time must have influenced both the parties to come to some settlement. The settlement has to be taken as a package deal and when labour has gained in the matter of wages and if there is some reduction in the matter of dearness allowance so far as the award is concerned, it cannot be said that the settlement as a whole is unfair and unjust. "

**(19)** In the case of **K.C.P. Limited Vs. Presiding Officer and others,** reported in **(1996) 10 SCC – 446,** cited by learned counsel for the petitioner, the Supreme Court while approving the law laid down in the case of *Herbertsons Ltd. Vs. The Workmen of Herbertsons Ltd. and others,(Supra)* held that the settlement arrived at in course of conciliation proceedings is put at par with an award and binding on both the parties.

**(20)** The case of **ITC Ltd. Worker's Welfare Association and another Vs. Management of ITC Ltd. and another**, reported in **(2002) 3 SCC - 411,** cited by learned counsel for the petitioner, is not applicable to the facts of the present case as in that case the settlement was entered into in the course of conciliation proceedings unlike the present one where the alleged settlement has been entered into during the pendency of the present writ petition.

**(21)** This settlement was not available when the matter was pending consideration for adjudication before the Industrial Court. Learned counsel for the respondent No.1 denies veracity of the agreement and, therefore, it is necessary that the veracity and effect of the settlement to

be examined by the Industrial Court in the interest of the labour and the management.

**(22)** For the reasons stated above, we hereby quash the award dated 06.02.2003 (Annexure P-12) passed by the Industrial Court, Bench at Raipur (C.G.) partly to the extent that the canteen workers are entitled to the similar service benefits as admissible to the regular employees of the petitioner-plant. Accordingly, we remit back the matter to the Industrial Court for fresh adjudication on the point as to whether the workers of the statutory as well as non-statutory canteen workers are entitled to the similar service benefits as admissible to the regular employees of the petitioner-plant after noticing the management of the cooperative societies and considering all the relevant facts as stated above and the alleged settlement entered into between the management of the petitioner-plant and the Steel Workers Union (representative union) dated 20.10.2004. The Industrial Court is further directed to dispose of the matter as early as possible preferably within a period of four months from the date of receipt of copy of this order. No order as to costs.

I agree

Sd/-
Chief Justice

Sd/-
Satish K. Agnihotri
Judge

Subbu